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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/920,469	08/01/2001	Henry Houh	EMPIR-018AUS	5568
22468	7590	11/02/2005		
CHAPIN & HUANG L.L.C. WESTBOROUGH OFFICE PARK 1700 WEST PARK DRIVE WESTBOROUGH, MA 01581			EXAMINER PHAN, THAI Q	
			ART UNIT 2128	PAPER NUMBER

DATE MAILED: 11/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/920,469	HOUH, HENRY	
	<b>Examiner</b>	<b>Art Unit</b>	
	Thai Q. Phan	2128	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 17 August 2005.
- 2a) ☒ This action is FINAL.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-83 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-83 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 August 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

This Office Action is in response to applicants' amendment filed on 08/17/2005.

Claims 1-83 are pending in the action.

#### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-83 are rejected under 35 U.S.C. 102(e) as being anticipated by Wang, Jay, US patent no. 6,845,352 B1.

As per claim 1, Wang anticipates a method and system for emulating a communication network with features very identical to the claimed invention. According to Wang, the network emulation includes steps

Receiving, with a network processor programmed to emulate network, an input packet stream (cols. 6-7, col. 8, lines 10-65, col. 9, lines 12-43, for example),

Providing, with the network emulation system, an output packet stream wherein the output packet stream comprising a modification of the input stream (cols. 6-10).

As per claim 2, Wang anticipates the modified output characteristics include delay, jitter, packet streams, etc (cols. 4-8).

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As per claims 3-12, Wang anticipates the network testing for data network including the claimed limitation such as optical network, data stream, VOIP, MOP, etc.

As per claim 13, Wang anticipates a method and system for emulating a communication network with features very identical to the claimed invention. According to Wang, the network emulation includes steps

Receiving, with a network processor programmed to emulate network, an input packet stream or data stream profile (cols. 6-7, col. 8, lines 10-65, col. 9, lines 12-43, for example),

Providing, with the network emulation system, an output packet stream wherein the output packet stream comprising a modification of the input stream or effect the network would have on the emulated packet due to traffic profile (cols. 6-10).

As per claims 14-24, Wang anticipates the claimed limitations for network flow emulation.

As per claim 25, Wang anticipates a method and system for emulating a communication network with features very identical to the claimed invention. According to Wang, the network emulation includes steps

Receiving, with a network processor programmed to emulate network, an input packet stream (cols. 6-7, col. 8, lines 10-65, col. 9, lines 12-43, for example),

Programming the network processor to process and output data packets at a specific time for emulation,

Providing, with the network emulation system, an output packet stream wherein the output packet stream comprising a modification of the input stream (cols. 6-10).

As per claims 26-28, Wang anticipates the claimed limitation for data packet emulation.

As per claim 29, Wang anticipates a test method and system for emulating and for testing a communication network with features very identical to the claimed invention. According to Wang, the network emulation/testing includes steps

Receiving, with a network processor programmed to emulate network, a network emulator, an input packet stream or data stream profile (cols. 6-7, col. 8, lines 10-65, col. 9, lines 12-43, for example),

Providing, with the network emulation system, an output packet stream wherein the output packet stream comprising a modification of the input stream or effect the network would have on the emulated packet due to traffic profile (cols. 6-10).

As per claims 30-40, Wang anticipates the claimed limitations for testing data communication networks, wherein the networks include a plurality of characteristics, performances, traffic flow profiles, flow controls, etc.

As per claims 42-55, due to the similarity of claims 42-55 to the above claims, claims 42-55 are also rejected in like manner.

As per claims 56 and 79, Wang anticipates a computer program product for performing emulation and testing a communication data network with features very identical to the claimed invention. According to Wang, the network emulation program in the network emulator includes means

Receiving, with a network processor programmed to emulate network, an input packet stream or data stream profile (cols. 6-7, col. 8, lines 10-65, col. 9, lines 12-43, for example),

Providing, with the network emulation system, an output packet stream wherein the output packet stream comprising a modification of the input stream or effect the network would have on the emulated packet due to traffic profile (cols. 6-10).

As per claims 57-67, Wang anticipates the computer program product implemented in a system for testing and emulating the data network, wherein the data networks include optical networks, Ethernet and others, testing of data flow including data stream, VOIP, MOP, etc.

As per claims 68-83, due to the similarity of claims 68-83 to the claims above, claims 68-83 are also rejected in like manner.

### ***Response to Argument/Amendment***

3. The Affidavit filed on 08/17/2005 under 37 CFR 1.131 has been considered but is ineffective to overcome the prior art reference.

4. The evidence submitted is insufficient to establish a conception of the invention prior to the effective date of the patent reference no. 6,845,352, issued to Wang. While conception is the mental part of the inventive act, it must be capable of proof, such as by demonstrative evidence or by a complete disclosure to another. Conception is more than a vague idea of how to solve a problem. The requisite means themselves and their interaction must also be comprehended. See *Mergenthaler v. Scudder*, 1897

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C.D. 724, 81 O.G. 1417 (D.C. Cir. 1897). The provided evidences, Invention disclosure titles of "Adding Network Behavior to Packets Traveling Between Two devices", "Recording A Network Profile and Then Using It to Re-Create the Network", "Method of Using a Network Processor as a Packet Engine", "Voice Traffic Sniffer for a Data Network", and "Method and Apparatus for Utilizing a Network processor as Part of a Test System" are not a complete disclosure. Applicant did not provide complete disclosures such as application serial number, publication date for the related invention titles to the USPTO Office or specification descriptions to the related invention titles as demonstrated in the Affidavit.

### ***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

1. US patent no. 5,608,720, issued to Biegel et al, on Mar. 1997
2. US patent no. 6,259,699 B1, issued to Opalka et al, on July 2001

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner Thai Phan whose telephone number is 571-272-3783. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kamini Shah can be reached on 571-272-2279. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Oct. 26, 2005

  
Thai Phan

Primary Examiner  
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